

PROPOSED CHANGES IN THE REGULATIONS

Title 3. California Code of Regulations

Sections 2303, 2309, and 2311

INITIAL STATEMENT OF REASONS/ POLICY STATEMENT OVERVIEW

Description of the Public Problem, Administrative Requirement, or Other Condition or Circumstances the Regulation is Intended to Address

These regulations are intended to address the obligations of the Department of Food and Agriculture to promote the distribution of effective and safe fertilizing materials essential for the production of food and fiber and to provide assurance to the consumer of commercial fertilizers that the product purchased is properly identified, and to provide assurance of the validity of the quality and quantity represented by the manufacturer of these products. (Food and Agricultural Code, Section 14501).

Specific Purpose and Factual Basis

The specific purpose of section 2303 is to provide labeling information for fertilizer materials. The specific purpose of Section 2309 is to provide for labeling guarantees for phosphorus materials. The specific purpose of Section 2311 is to define types of slow released plant nutrients and require guarantees for slow release claims.

The factual basis for the determination by the Department that the amendments of Sections 2303(r)(1) & (s), 2309(b), and 2311(b)(5) are necessary follows:

The Secretary of Food and Agriculture proposes the adoption of the following regulations based upon recommendations of the regulated industry and staff at the Agricultural Commodities and Regulatory Services Branch. Section 2303(r)(1) which sets up limits for arsenic, cadmium, and

lead in the base materials used to produce fertilizers is ambiguous and confusing to the regulated industry for determining which product requires a guarantee statement. The examples provided are too broad and include products that are not base ingredient material. There are only a few products that are considered base ingredient material used in fertilizer manufacturing. Logically if these ingredients meet the concentration limits for arsenic, cadmium, and lead, then any products formulated from these should meet the concentration limits. Because of the nature of base ingredient material, recycled from hazardous waste or mined, rather than being synthesized in a laboratory, it is very difficult to formulate a product with specific contaminant purity level. It was the Department's intent to develop regulations that are efficient and enable the fertilizer industry to address metal contaminants in fertilizers.

Section 2303(s) contains an editorial error that inadvertently requires bulk blended fertilizing materials to provide an informational statement, providing the maximum levels of arsenic, cadmium, cobalt, copper, lead, mercury, molybdenum, nickel, and selenium. This provision was intended only for packaged blended fertilizing materials to inform home gardeners of the integrity of the product available for purchase. This requirement is burdensome for bulk blenders because of commingling of base products from different sources, the number of custom formulations, and large volume demand for commercial and agricultural use. This section also does not specify the units for reporting of the heavy metals level in the informational statement.

Section 2309 provides for labeling guarantees for phosphorus products that contain available phosphoric acid. This section does not allow products that do not contain available phosphoric acid, but contain a slow release form of phosphorus such as phosphorous acid to make guarantees for phosphorus. Phosphorous acid products do not immediately contain available phosphoric acid; but over time the phosphorous acid will get converted to available phosphoric acid in soil or plants.

Section 2311 defines types of slow release nitrogen, phosphorus, and potash nutrients and requires labeling guarantees for slow release claims. However, it does not recognize phosphorous acid products as a type of slow release source of phosphorus.

The proposed amendments to Section 2303(r)(1) provides more clarity to the definition of base fertilizing material ingredient for zinc, iron and manganese products by 1) replacing old, confusing examples with the new examples of zinc oxide, zinc sulfate, zinc from galvanizer skimmings, zinc from electric arc furnace dust, metallic zinc, refined zinc from the copper pickling process, zinc from circuit board recycling, iron II and III oxides, iron ore deposits, iron from recycling of bailing wire, rust or photographic operations, and manganese oxide; and 2) adding the term “singly or” to indicate a base ingredient material may be used by itself or be formulated at various concentration levels with other ingredients. These clarifications will facilitate proper labeling by the fertilizer industry and enforcement by the Department.

The proposed amendment to section 2303(s) corrects an editorial error to exempt bulk commercial and agricultural minerals from providing an informational statement. Also, it specifies that the informational statement report maximum metals concentrations in parts per million.

The proposed amendments to Section 2309 adds subsection (a), allowing for guarantees for total phosphoric acid for phosphorous acid products. As a result of this amendment, it was necessary to identify the previous language in this section as subsection (b).

The proposed amendments to Section 2311 adds subsection (b) number (5), recognizing phosphorous acid products as a type of slow release nutrient source of phosphorus.

These facts justify the need for proposed amendments to the regulations and are based upon the obligation of the Department to promote the distribution of effective and safe fertilizing materials and prevent the distribution of adulterated product that contains deleterious or harmful ingredients.

Estimated Cost or Savings to Public Agencies or Affected Private Individuals or Entities

The Department of Food and Agriculture has determined that these changes in Sections 2303 and 2309 and 2311 do not impose a mandate on local agencies or school districts. The Department also has determined that no savings or increased costs to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the proposed action.

The cost impact of the changes in the regulation on private persons or businesses is expected to be insignificant.

Assessment

The Department has made an assessment that this amendment to the regulations would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of business currently doing business within California.

Alternatives Considered

The Department of Food and Agriculture must determine that no alternative considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.